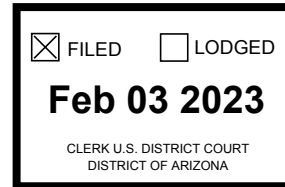


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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA

12 United States of America,
13 Plaintiff,

CR 23-00126-TUC-JGZ-LAB
Mag. No. 23-04238M (LAB)

14 vs.

PLEA AGREEMENT

15 Gerardo Jose Tona-Rubio,
16 Defendant.

(Fast Track U.S.S.G. § 5K3.1)

17 The United States of America and the defendant agree to the following disposition
18 of this matter:

19 PLEA

20 The defendant agrees to plead guilty to the Information / Count One of the
21 Indictment charging the defendant with a violation of 8 U.S.C. §§ 1324(a)(1)(A)(v)(I),
22 1324(a)(1)(A)(ii) and 1324(a)(1)(B)(i), Conspiracy to Transport Illegal Aliens for Profit, a
23 felony. Any remaining counts will be dismissed at the time of sentencing.

24 ELEMENTS OF THE OFFENSE AND SENTENCING FACTOR

25 1. There was an agreement between two or more persons to commit the offense
26 of transporting illegal aliens in violation of Title 8, United States Code, Section
27 1324(a)(1)(A)(ii), that is, there was an agreement that all or some of the co-conspirators,
28 knowing or in reckless disregard of the fact that aliens had come to, entered, or remained

1 in the United States in violation of law, would knowingly transport such aliens within the
2 United States by means of transportation or otherwise, in furtherance of such violation of
3 law.

4 2. The defendant became a member of the conspiracy knowing that the object
5 of the conspiracy was the transportation of illegal aliens and the defendant intended to
6 accomplish said object for the purpose of private financial gain or commercial advantage.

7 STIPULATIONS, TERMS AND AGREEMENTS

8 Maximum Penalties

9 A violation of 8 U.S.C. §§ 1324(a)(1)(A)(v)(I), 1324(a)(1)(A)(ii) and
10 1324(a)(1)(B)(i) is punishable by a maximum fine of \$250,000.00, or a maximum term of
11 imprisonment of ten (10) years, or both, plus a term of supervised release of three years
12 and a special assessment of \$100; the special assessment is due and payable at the time the
13 defendant enters the plea of guilty, and must be paid by the time of sentencing unless the
14 defendant is indigent. If the defendant is indigent, the special assessment will be collected
15 according to Title 18, United States Code, Chapters 227 and 229.

16 The defendant will pay upon conviction an additional \$5,000 special assessment
17 pursuant to 18 U.S.C. § 3014(a), unless the Court determines that the defendant is indigent.

18 Agreements Regarding Sentence

19 1. Guideline Calculations: Although the parties understand that the Guidelines
20 are only advisory and just one of the factors the Court will consider under 18 U.S.C. §
21 3553(a) in imposing a sentence, pursuant to Fed. R. Crim. P. 11(c)(1)(C), the parties
22 stipulate and agree that the below guideline calculations are appropriate for the charge for
23 which the defendant is pleading guilty:

24 Base Offense Level:	2L1.1(a)(3)	12
25 Acceptance of Responsibility:	3E1.1(a)&(b)	-2
26 Early Disposition/Government Savings:	5K3.1/5K2.0	<u>-2</u>
		8

1 2. Sentencing Range: Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the government
2 and the defendant stipulate and agree that the following are the applicable guideline ranges
3 for the offense, based on the defendant's criminal history category (CHC):

4
5 CHC I: a sentencing range of 0-6 months imprisonment.
6 CHC II: a sentencing range of 4-10 months imprisonment.
7 CHC III: a sentencing range of 6-12 months imprisonment.
8 CHC IV: a sentencing range of 10-16 months imprisonment.
9 CHC V: a sentencing range of 15-21 months imprisonment.
10 CHC VI: a sentencing range of 18-24 months imprisonment.

11 **This plea agreement is contingent on the successful guilty pleas of all defendants in**
12 **23-04238M (LAB). If any of the co-defendants do not plead guilty in this case, the**
13 **government reserves the right to withdraw from the plea agreement.**

14 3. The defendant may withdraw from the plea agreement if he/she receives a
15 sentence that exceeds the stipulated ranges listed above.

16 4. If the defendant moves for any adjustments in Chapters Two, Three or Four of
17 the Sentencing Guidelines or any "departures" from the Sentencing Guidelines, the
18 government may withdraw from this agreement. If the defendant argues for a variance
19 under 18 U.S.C. § 3553(a) in support of a sentence request below the stipulated range in
20 this agreement, the government may oppose the requested variance. The government,
21 however, will not withdraw from the agreement if the defendant argues for, and the Court
22 grants, a variance below the stipulated range in this agreement.

23 5. The parties agree that the defendant was an average participant in the offense for
24 the purpose of role analysis under U.S.S.G. §§ 3B1.1 and 3B1.2.

25 6. If the Court, after reviewing this plea agreement, concludes any provision is
26 inappropriate under Fed. R. Crim. P. 11(c)(5), it may reject the plea agreement, giving the
27 defendant, in accordance with Fed. R. Crim. P. 11(d)(2)(A), an opportunity to withdraw
28 the defendant's guilty plea.

 7. The defendant recognizes that pleading guilty may have consequences with
respect to his/her immigration status if defendant is not a citizen of the United States.
Under federal law, a broad range of crimes are removable offenses, including the offense(s)

1 to which defendant is pleading guilty. Removal and other immigration consequences may
2 be the subject of a separate judicial or administrative proceeding, and the defendant has
3 discussed the direct and collateral implications this plea agreement may have with his or
4 her defense attorney. Defendant nevertheless affirms that he/she wants to plead guilty
5 regardless of any immigration consequences that this plea may entail, even if the
6 consequence is defendant's automatic removal from the United States.

7 AGREEMENT AS TO FORFEITURE

8 Defendant, Gerardo Jose Tona-Rubio, knowingly and voluntarily agrees to forfeit
9 all right, title and interest in one 2015 GMC Yukon, VIN: 1GKS1BKC1FR660422; and
10 one 2010 Mercedes GLK350, VIN: WDCGG5GB1AF424293.

11 Defendant knowingly and voluntarily agrees not to pursue any filed claims, and to
12 waive all interest in the assets listed above, in any administrative, civil or criminal judicial
13 proceeding, whether state or federal, which may be initiated.

14 Defendant knowingly and voluntarily agrees to consent to the entry of orders of
15 forfeiture for the forfeitable assets and waives the requirements of Federal Rules of
16 Criminal Procedure, Rule 32.2 regarding notice of the forfeiture in the charging instrument,
17 announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the
18 judgment.

19 The defendant acknowledges that the defendant understands that the forfeiture of
20 assets is part of the sentence that may be imposed in this case and waives any failure by
21 the Court to advise the defendant of this, pursuant to Federal Rule of Criminal Procedure
22 11(b)(1)(J), at the time the defendant's guilty plea is accepted.

23 Defendant knowingly and voluntarily agrees to waive all constitutional, legal, and
24 equitable defenses to all constitutional and statutory challenges in any manner (including
25 direct appeal, habeas corpus, any jeopardy defense or claim of double jeopardy, or any
26 other means), and knowingly and voluntarily agrees to waive any claim or defense under
27 the Eighth Amendment to the United States Constitution, including any claim of excessive
28 fine or punishment, to any forfeiture carried out in accordance with this plea agreement on

1 any grounds.

2 Defendant warrants that the defendant is the owner or has an interest in the property
3 listed above because it was seized from him, and knowingly and voluntarily agrees to hold
4 the United States, its agents and employees harmless from any claims whatsoever in
5 connection with the seizure or forfeiture of the above-listed assets covered by this
6 agreement.

7 Defendant knowingly and voluntarily agrees and understands the forfeiture of the
8 assets listed above shall not be treated as satisfaction of any assessment, fine, restitution,
9 cost of imprisonment, or any other penalty this Court may impose upon the defendant in
10 addition to the forfeiture.

11 Plea Addendum

12 This written plea agreement, and any written addenda filed as attachments to this
13 plea agreement, contained all the terms and conditions of the plea. Any additional
14 agreements, if any such agreements exist, shall be recorded in a separate document and
15 may be filed with the Court under seal. Accordingly, additional agreements, if any, may
16 not be in the public record.

17 Waiver of Defenses and Appeal Rights

18 Provided the defendant receives a sentence not to exceed 24 months' imprisonment,
19 the defendant waives any and all motions, defenses, probable cause determinations, and
20 objections that the defendant could assert to the information or indictment, or to the petition
21 to revoke, or to the Court's entry of judgment against the defendant and imposition of
22 sentence upon the defendant providing the sentence is consistent with this agreement. The
23 sentence is in accordance with this agreement if the sentence imposed is within the
24 stipulated range or below the stipulated range if the Court grants a variance. The defendant
25 further waives: (1) any right to appeal the Court's entry of judgment against defendant; (2)
26 any right to appeal the imposition of sentence upon defendant under 18 U.S.C. § 3742
27 (sentence appeals); (3) any right to appeal the district court's refusal to grant a requested
28 variance; (4) any right to collaterally attack defendant's conviction and sentence under 28

1 U.S.C. § 2255, or any other collateral attack; and (5) any right to file a motion for
2 modification of sentence, including under 18 U.S.C. § 3582(c) (except for the right to file
3 a compassionate release motion under 18 U.S.C. § 3582(c)(1)(A) and to appeal the denial
4 of such a motion). The defendant acknowledges that this waiver shall result in the dismissal
5 of any appeal or collateral attack the defendant might file challenging his/her conviction or
6 sentence in this case. If the defendant files a notice of appeal or a habeas petition,
7 notwithstanding this agreement, defendant agrees that this case shall, upon motion of the
8 government, be remanded to the district court to determine whether defendant is in breach
9 of this agreement and, if so, to permit the government to withdraw from the plea agreement.
10 This waiver shall not be construed to bar an otherwise-preserved claim of ineffective
11 assistance of counsel or of "prosecutorial misconduct" (as that term is defined by Section
12 II.B of Ariz. Ethics Op. 15-01 (2015)).

13 Reinstitution of Prosecution

14 Nothing in this agreement shall be construed to protect the defendant in any way
15 from prosecution for perjury, false declaration or false statement, or any other offense
16 committed by the defendant after the date of this agreement. In addition, if the defendant
17 commits any criminal offense between the date of this agreement and the date of
18 sentencing, the government will have the right to withdraw from this agreement. Any
19 information, statements, documents and evidence which the defendant provides to the
20 United States pursuant to this agreement may be used against the defendant in all such
21 proceedings.

22 If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any
23 court in a later proceeding, the government will be free to prosecute the defendant for all
24 charges as to which it has knowledge, and any charges that have been dismissed because
25 of this plea agreement will be automatically reinstated. In such event, the defendant waives
26 any objections, motions, or defenses based upon the Speedy Trial Act or the Sixth
27 Amendment to the Constitution as to the delay occasioned by the later proceedings.
28

1 Defendant agrees that the stipulated sentencing ranges set forth under "Agreements
2 Regarding Sentence" will not be offered if prosecution is re-instituted.

3 Disclosure of Information to U.S. Probation Office

4 The defendant understands the government's obligation to provide all information
5 in its file regarding defendant to the United States Probation Office. The defendant fully
6 understands and agrees to cooperate fully with the United States Probation Office in
7 providing all information requested by the probation officer.

8 Effect on Other Proceedings

9 I further understand that if I violate any of the conditions of my supervised release,
10 my supervised release may be revoked. Upon such revocation, notwithstanding any other
11 provision of this agreement, I may be required to serve a term of imprisonment or my
12 sentence may otherwise be altered.

13 WAIVER OF DEFENDANT'S RIGHTS

14 I have read each of the provisions of the entire plea agreement with the assistance
15 of counsel and understand its provisions. I have discussed the case and my constitutional
16 and other rights with my attorney. I understand that by entering my plea of guilty I will be
17 giving up my right to plead not guilty; to trial by jury; to confront, cross-examine, and
18 compel the attendance of witnesses; to present evidence in my defense; to remain silent
19 and refuse to be a witnesses against myself by asserting my privilege against self-
20 incrimination; all with the assistance of counsel, to be presumed innocent until proven
21 guilty beyond a reasonable doubt, and to appeal. This waiver shall not be construed to bar
22 an otherwise-preserved claim of ineffective assistance of counsel or of "prosecutorial
23 misconduct."

24 I agree to enter my guilty plea as indicated above on the terms and conditions set
25 forth in this agreement.

26 I have been advised by my attorney of the nature of the charge to which I am entering
27 my guilty plea. I have further been advised by my attorney of the nature and range of the
28 possible sentence.

1 My guilty plea is not the result of force, threats, assurance or promises other than
2 the promises contained in this agreement. I agree to the provisions of this agreement as a
3 voluntary act on my part, rather than at the direction of or because of the recommendation
4 of any other person, and I agree to be bound according to its provisions.

5 I agree that this written plea agreement contains all the terms and conditions of my
6 plea and that promises made by anyone (including my attorney) that are not contained
7 within this written plea agreement are without force and effect and are null and void.

8 I am satisfied that my defense attorney has represented me in a competent manner.

9 I am not now on or under the influence of any drug, medication, liquor, or other
10 intoxicant or depressant, which would impair my ability to fully understand the terms and
11 conditions of this plea agreement.

12 FACTUAL BASIS AND SENTENCING FACTOR

13 I agree that the following facts accurately describe my conduct in connection with
14 the offense to which I am pleading guilty and that if this matter were to proceed to trial the
15 government could prove these facts beyond a reasonable doubt:

16 From a time unknown to on or about January 9, 2023, in the District of
17 Arizona, I, Gerardo Jose Tona-Rubio, knowingly conspired and agreed with
18 Rosa Isela Ruiz and other persons, known and unknown, to transport illegal
19 aliens for profit. Specifically, on January 9, 2023, I was driving a 2010
20 Mercedes Benz GLK350 while traveling in tandem with Rosa Isela Ruiz,
21 who was driving a 2015 GMC Yukon. We picked up two illegal aliens,
22 including Armando Pineda-Torres and Norma Cosio-Hernandez. I knew the
23 individuals were illegal aliens, and I intended to assist them in remaining in
24 the United States unlawfully. I was going to be paid for the transportation.

25 I have read this agreement or it has been read to me in Spanish, and I have carefully
26 reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it.

27 Date: 2/3/23

28 Gerardo Jose Tona-Rubio
Gerardo Jose Tona-Rubio
Defendant

1 DEFENSE ATTORNEY'S APPROVAL

2 I have discussed this case and the plea agreement with my client in detail and have
3 advised the defendant of all matters within the scope of Rule 11, Fed. R. Crim. P., the
4 constitutional and other rights of an accused, the factual basis for and the nature of the
5 offense to which the guilty plea will be entered, possible defenses, and the consequences
6 of the guilty plea, including the defendant's waiver of the right to appeal. No assurances,
7 promises, or representations have been given to me or to the defendant by the government
8 or by any of its representatives which are not contained in this written agreement. I concur
9 in the entry of the plea as indicated above and on the terms and conditions set forth in this
10 agreement as in the best interests of my client. I agree to make a bona fide effort to ensure
11 the guilty plea is entered in accordance with all the requirements of Rule 11, Fed. R. Crim.
12 P.

13 I translated or caused to be translated this agreement from English into Spanish to
14 the defendant on the 3rd day of February, 2023.

15
16 Date: 2/3/23

17 Matthew J. McGuire, Esq.
18 Attorney for Defendant

19 GOVERNMENT'S APPROVAL

20 I have reviewed this matter and the plea agreement. I agree on behalf of the United
21 States that the terms and conditions set forth are appropriate and are in the best interests of
22 justice.

23 GARY M. RESTAINO
24 United States Attorney
District of Arizona

25 Digitally signed by MICHELLE CHAMBLEE

26 Date: 2023.01.30 13:23:31 -07'00

MICHELLE CHAMBLEE

27 REBECCA S. GARVEY
MICHELLE CHAMBLEE
28 Assistant U.S. Attorneys